
OPINION OF THE PUBLIC ACCESS COUNSELOR

KENDRA J. OWEN,
Complainant,

v.

GIBSON COUNTY SHERIFF'S DEPARTMENT
Respondent.

Formal Complaint No.
18-FC-94

Luke H. Britt
Public Access Counselor

BRITT, opinion of the Counselor:

This advisory opinion is in response to the formal complaint alleging that the Gibson County Sheriff's Department ("GCSD") violated the Access to Public Records Act¹ ("APRA"). The GCSD has not responded to the complaint despite an invitation to do so on June 20, 2018. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on June 13, 2018.

¹ Ind. Code §§ 5-14-3-1 to -10

BACKGROUND

Kendra J. Owen (“Complainant”) claims the Gibson County Sheriff’s Department violated the Access to Public Records Act by denying her request improperly.

On April 11, 2018, Owen submitted a public records request to the GCSD seeking a large number of documents. On April 16, 2018, the department properly acknowledged the request and indicated it was under review and the records would be forthcoming *if* the records were found. Owen then followed up on April 30 for a status update. None was given although a response was supplied indicating a personnel issue. Since that date, no further correspondence was had between the parties.

Owen considers the lack of further communication a denial. Furthermore, she takes exception to the acknowledgement which seemingly leaves the matter open ended.

ANALYSIS

1. The Access to Public Records Act (“APRA”)

The Access to Public Records Act (“APRA”) states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” Ind. Code § 5-14-3-1. The Gibson County Sheriff’s Department is a public agency for purposes of APRA; and therefore, subject to its requirements. *See* Ind. Code § 5-14-3-2(q). As a result, unless an exception applies, any person has the right to inspect and copy the Department’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

In order to avoid records requests having an indefinite timeframe, the APRA provides two key mechanisms to bookend the process. The first is the concept of reasonable timeliness to respond pursuant to Indiana Code section 5-14-3-3. A public agency has to provide the records, if any, within a reasonable time after the request is acknowledged. While that parameter is not defined by law and is elastic to a degree, it is not a method by which an agency can stall a request.

Toward that end, a requester is entitled to a written justification for a denial should the agency choose to withhold records. This is also the case if records do not exist. Indiana Code section 5-14-3-9 governs the procedure for denying a request and subsections (d)(1) & (2) stipulate that a written request *must be* accompanied by a written denial if the situation warrants it. It also must include a statement of specific exemption or exemptions authorizing the denial and the name of the person responsible for the denial. The same is true if the records do not exist. The requester is entitled to a final disposition of a request in writing.

CONCLUSION

Based on the foregoing, it is the opinion of the Public Access Counselor that the Gibson County Sheriff's Department is in non-compliance with the Access to Public Records Act for failing to provide written disposition of the request and for a general lack of providing any significant manner of status updates.



Luke H. Britt
Public Access Counselor